

REMARKS

Favorable reconsideration of this application is respectfully requested in view of amendments above and the following remarks. By virtue of the amendments above, claims 1, 20, 25, 26, 30, 31, and 33-35 have been amended, and claims 3, 23, 24, 28, and 29 have been canceled without prejudice or disclaimer of the subject matter therein. Claim 5 was previously canceled without prejudice or disclaimer of the subject matter therein. Accordingly, claims 1, 2, 4-22, 25-27, and 30-35 are pending in the present application, of which claims 1, 20, 26, 31, and 35 are independent.

Claims 1-2, 4, 6, 12, 21 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Miller et al. (2004/0178974) (“Miller”) in view of Shen et al. (6,414,661) (“Shen”).

Claims 13, 17, 23 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Miller taken with Shen, as applied to claim 1, and further in view of Dedene et al. (7,176,861) (“Dedene”).

Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over Miller taken with Shen, as applied to claim 1, and further in view of Konishi et al. (2002/0011777) (“Konishi”).

Claims 22 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Miller taken with Shen, as applied to claim 1, and further in view of Miller et al. (EP 1,408,722) (“EP ‘722”).

Claim 20 was rejected under 35 U.S.C. §103(a) as being unpatentable over Shen.

Claim 35 was rejected under 35 U.S.C. §103(a) as being unpatentable over Dedene.

Drawings

The Examiner's indication of the acceptance of the drawings as filed on April 23, 2004 is appreciated.

Information Disclosure Statement

The indication that the documents cited in the Information Disclosure Statement (IDS) filed on April 23, 2004 have been considered is acknowledged. Further, the Office Action Summary indicates that a copy of the IDS filed on March 16, 2006 is attached. However, such a copy is not found with the Office Action. Nonetheless, such production of the copy is irrelevant in that all of the documents on the IDS filed on March 16, 2006 have already been acknowledged to have been considered by the Examiner in the copies of the IDS accompanying a previous Office Action mailed on June 8, 2007.

Allowable Subject Matter

Independent claim 31 was not rejected over prior art. Since the only rejection of claim 31 was under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter and claim 31 has been amended to overcome the rejection, claim 31 is submitted to be allowable over the cited documents of record.

The indication that claims 3, 7-11, 14-16, 19, 24, 25, 29, and 30 are objected to as being dependent upon a rejected base claim, but that these claims would be allowable if rewritten in independent form is also noted with appreciation. Claim 3 has been canceled and its allowable subject matter has been incorporated into independent claim 1. Claim 24 has been canceled and its allowable subject matter has been incorporated into independent claim

20. Claim 29 has been canceled and its allowable subject matter has been incorporated into independent claim 26. Thus, independent claims 1, 20, and 26 and their respective dependent claims are submitted to be allowable over the cited documents of record.

Claim Rejection Under 35 U.S.C. §101

Claim 31 was rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. More specifically, the Office Action at page 3 states that claim 31 recites a computer software embedded on a computer readable medium, where the instant specification states that the computer readable medium includes a signal, and that such a computer readable medium “on an electromagnetic carrier signal” is not statutory. Claim 31 has been amended to recite “Computer software embedded on a tangible computer readable storage device.” According to the Merriam-Webster Online Dictionary 2008, the term “tangible” at the instance 1a is defined as “capable of being perceived especially by the sense of touch.” Further, a “storage device” is a physical touchable object. Accordingly, “Computer software embedded on a tangible computer readable storage device” is capable of being perceived by a sense of touch and is not an abstract idea. Thus, withdrawal of the foregoing rejection is respectfully requested.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of

ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, “[a]ll claim limitations must be considered” because “all words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 1-2, 4, 6, 12, 21 and 26

Claims 1-2, 4, 6, 12, 21 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Miller in view of Shen. Independent claims 1, 20, and 26 have been amended to include the allowable subject matter of the now-canceled claims 3, 24, and 29, respectively, and thus this rejection is now moot.

Claims 13, 17, 23 and 28

Claims 13, 17, 23 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Miller taken with Shen, as applied to claim 1, and further in view of Dedene. Independent claims 1, 20, and 26 have been amended to include the allowable subject matter of the now-canceled claims 3, 24, and 29, respectively, and thus this rejection is now moot.

Claim 18

Claim 18 was rejected under 35 U.S.C. §103(a) as being unpatentable over Miller taken with Shen, as applied to claim 1, and further in view of Konishi. Claim 18 depends from independent claim 1, and independent claim 1 has been amended to include the allowable subject matter of the now-canceled claim 3. Thus, this rejection is now moot.

Claims 22 and 27

Claims 22 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Miller taken with Shen, as applied to claim 1, and further in view of EP '722. Independent claims 20 and 26 have been amended to include the allowable subject matter of the now-canceled claims 24 and 29, respectively, and thus this rejection is now moot.

Claim 20

Claim 20 was rejected under 35 U.S.C. §103(a) as being unpatentable over Shen. Independent claim 20 has been amended to include the allowable subject matter of the now-canceled claim 24, and thus this rejection is now moot.

Claim 35

Claim 35 was rejected under 35 U.S.C. §103(a) as being unpatentable over Dedene. This rejection is traversed for at least the following reasons.

Claim 35 has been amended to recite that a processor is operable to:

- determine to control the display in response to a lifetime metric exceeding a threshold;
- identify the plurality of display control options in response to the determination to control the display; and
- select at least one of the plurality of display control options to control the display, wherein the selection includes identifying a user acceptance setting on implementing any one of the plurality of display control options.

Dedene fails to teach or suggest at least the above recited features of claim 35. For instance, Dedene fails to teach or suggest at least selecting at least one of the plurality of display control options to control the display, wherein the selection includes identifying a user acceptance setting on implementing any one of the plurality of display control options. More specifically, Dedene discloses determining “sub-pixel areas such that each sub-pixel has a lifetime similar to that of the complete pixel itself.” Dedene at column 12, lines 31-34. However, Dedene fails to teach or suggest that such determination of “sub-pixel areas” includes identifying a user acceptance setting on implementing a display control option. The rest of Dedene’s disclosure fails to correct the foregoing deficiency. Thus, Dedene fails to teach or suggest selecting at least one of the plurality of display control options to control the display, wherein the selection includes identifying a user acceptance setting on implementing any one of the plurality of display control options.

Accordingly, it is respectfully submitted that a *prima facie* case of obviousness has not been established under 35 U.S.C. § 103 with respect to claim 35. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claim 35 and to allow this claim.

PATENT

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Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: November 13, 2008

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